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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,572	02/16/2001	Clifford A. Pickover	101.008	4256

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EXAMINER

PUENTE, EMERSON C

ART UNIT	PAPER NUMBER
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2184

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/785,572

Applicant(s)

PICKOVER ET AL.

Examiner

Emerson C Puente

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8-13, 20-23, and 25-26 are rejected under 35 U.S.C. **102(e)** as being anticipated by US Patent No. 6,553,507 of Cohen.

In regards to claim 1, Cohen discloses a method of supporting a software program, comprising:

receiving error data for at least a first error (see column 2 lines 56-64);  
identifying a patch for said at least first error (see column 2 lines 56-64); and  
forwarding said patch to update said software program (see column 2 lines 65-67);

In regards to claim 2, Cohen discloses wherein first data comprises first data identifying said at least first error (see column 2 lines 20-25 and 50-64).

In regards to claim 3 and 4, Cohen discloses wherein said first data includes an error code and an application identifier (see column 2 lines 20-25 and 50-55).

In regards to claim 5, Cohen discloses monitoring said software program for the generation of errors, and identifying said at least first error (see column 2 lines 1-15 and 40-55).

In regards to claim 8, Cohen discloses wherein the first error is a user error (see column 2 lines 10-15).

In regards to claim 9, Cohen discloses wherein said user error is a failure to properly operate said software program (see column 2 lines 10-15).

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In regards to claim 10, Cohen discloses wherein the user error is a failure to efficiently operate said software program (see column 2 lines 10-15).

In regards to claim 11, Cohen discloses wherein said error is a media error (see column 2 lines 5-10).

In regards to claim 12, Cohen discloses wherein said at least first error is an application program error (see figure 3 and column 1 lines 57-65).

In regards to claim 13, Cohen discloses said patch includes executable code adapted to correct said at least first error (see column 1 lines 37-45 and column 2 lines 26-37).

In regards to claim 20, Cohen disclose wherein error data further comprises:  
second data identifying at least a first condition under which said at least first error occurred (see column 2 lines 50-64).

In regards to claim 21, Cohen discloses a device for supporting software on at least a first user device, comprising:

- a processor (see figure 1 item 106);
- a communication device, coupled to said processor, receiving error information from said at least first user device (see figure 1 and column 2 lines 11-15); and
- a storage device in communication with said processor and storing instructions adapted to be executed by a processor (see figure 1 and column 2 lines 11-15);

In regards to claim 22, Cohen discloses wherein said error information comprises:  
first information identifying said at least first error (see column 2 lines 20-25);  
and

second information identifying at least a first condition under which said at least first error occurred (see column 2 lines 50-64).

In regards to claim 23, Cohen discloses said first information includes at least an error code and an application identifier (see column 2 lines 20-25 and 50-55).

In regards to claim 25, Cohen disclose a system for supporting software comprising:

- at least a first user device having a processor(see figure 1 item 106 and column 2 line 9);

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a communication device, coupled to said processor, configured to send and receive data over a network (see figure 1 and column 2 lines 11-15); and

a storage device in communication with said processor and storing instructions adapted to be executable by said processor to execute at least a first software program, monitor said at least first software program for errors, and forward error information about an at least first error to a controller(see figure 1 and column 2 lines 1-15 and 40-55) and ,

said controller having a controller processor, a controller communication device, coupled to said controller processor, configured to send and receive data over said network, and a storage device in communication with said controller processor to receive said error information about said at least first error, identify a patch for said at least first error; and forward said patch to update said at least first software program on said at least first user device (see column 2 lines 56-67).

In regards to claim 26, see basis for rejection for claim 1. Claim 26 is simply a computer readable storage medium which stores a program for implementing the method set forth in claim 1, and therefore is necessarily included in the teachings of Cohen.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-7, 14-19, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen in further view of US Patent No. 6,151,643 of Cheng et al. referred hereinafter "Cheng".

In regards to claim 14-16, Cohen discloses all the claimed subject matter, except wherein said forwarding said patch further comprises forwarding support information to

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said user device, wherein support information includes an advertisement and set of instructions for operating said software program.

Cheng disclose forwarding support information to the user device, wherein support information includes an advertisement and set of instructions for operating said software program. Cheng states each software update is associated with information that describes the particulars for the installation, such as configuration, decompression, or other information (see column 8 lines 55-62). Furthermore, Cheng discloses sending information, advertisements and other promotional material to each specific user, indicating support information including an advertisement (see column 22 lines 29-34), and downloading a software update, along with installation program, files, or the like (see column 8 lines 36-40), indicating instructions for operating said software program .

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include support information, wherein support information includes an advertisement. A person of ordinary skill in the art would have been motivated to make the modification to Cohen because advertisement, as per teaching of Cheng, would make the user aware of information associated or derived from the software program, which mostly likely be of interest to the user, as per teaching Cheng (see column 22 lines 63-66). Furthermore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to include support information , wherein the support information includes a set of instructions for operating said software program. A person of ordinary skill in the art would have been motivated to make the modification to Cohen because installation programs, files or the like, indicating instructions for operating said software program, is known and commonly used to provide a means for the installation of the update or patch, as per teaching of Cheng (see column 8 lines 55-62).

In regards to claim 17, Cohen discloses all the claimed subject matter, except receiving payment for said patch.

However, Cheng discloses receiving payment for patch (see column 9 lines 17-27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to receive payment for the patch. A person of ordinary skill in the art

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would have been motivated to receive payment for the patch because Cohen discloses forwarding a patch for updating software, thus providing service, and Cheng discloses receiving payment for a software update, thus providing reimbursement for the service.

In regards to claim 18, Cheng discloses wherein said payment is received from a user of said user device (see column 9 lines 17-21).

In regards to claim 19, Cheng discloses wherein said payment is received from a provider of said software program (see column 9 lines 22-27).

In regards to claim 6 and 24 Cohen fails to disclose notifying a third party of said at least first error. However, Cheng discloses receiving payment for patch, wherein said payment is received from a provider of said software program, indicating notifying a third party of at least first error.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to receive payment for the patch, wherein said payment is received from a provider of said software program, indicating notifying a third party of at least first error. A person of ordinary skill in the art would have been motivated to receive payment for the patch for the reason cited under claim 17.

In regards to claim 7, Cheng discloses wherein said third party is a provider of said software (see column 9 lines 22-27). Cohen further discloses said at least first error is an error in content provided by said software provider (see column 1 lines 60-65).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

See Form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Emerson Puente, whose telephone number is (703) 305-8012. The examiner can normally be reached on Monday-Friday from 8:00AM- 5:00PM, first Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Robert Beausoliel*, can be reached on (703) 305-9713 or via e-mail addressed to [*robert.beausoliel@uspto.gov*]. The fax number for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [**emerson.puente@uspto.gov**].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 305-3900.

**Emerson Puente**  
**9/21/03**

  
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